

**ANIMAL LAW OFFICES
OF ADAM P. KARP, JD, MS**

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Licensed in Washington, Oregon, and Idaho

By Certified Mail, Return Receipt Requested

Filer City Clerk
Shari Hart
PO Box 140
Filer, ID 83328
(208) 326-5000
flrctyclrk@filertel.com

Filer Police Chief
Tim Reeves
PO Box 140
Filer, ID 83328
(208) 326-4123

RE: Clubb | Hassani and City of Filer et al.
Notice of Claim (IC 6-906 et seq.)

Dear Clerk Hart and Chief Reeves,

Claim and Description:

Pursuant to IC 6-906 et seq., claimant Richard D. Clubb, through his attorneys Adam P. Karp of the Bellingham, Wash.-based Animal Law Offices of Adam P. Karp, and Nate Peterson of the Boise, Id.-based Nate Peterson Law, PLLC, gives formal notice that a claim for compensatory and punitive damages, reasonable attorney's fees, and costs, will be asserted by him against the City of Filer, Officer Tarek Hassani, and the Filer Police Department, in relation to Hassani's slaying of Hooch, Mr. Clubb's black lab, during Mr. Clubb's nine-year-old's birthday party, on Feb. 8, 2014 at about 5:36 p.m., in Mr. Clubb's front yard at 1009 Jacklyne Cir., Filer, ID 83328; as well as Hassani's failure to examine Hooch to determine if he required medical assistance or might have survived had he assisted Mr. Clubb in taking him to a veterinarian instead of blockading him at his front door, ordering him to sit down, and

demanding his identification. Mr. Clubb presently resides at 1009 Jacklyne Cir., Filer, ID and resided at that address for the last six months.

The Clubbs acquired Hooch about two and a half years before Feb. 8, 2014. He instantly became a significant member of the family and bonded closely to Mr. Clubb – going to bed when he turned in, waiting by the shower until Mr. Clubb finished bathing, sitting by his feet during the day, and observing nearby when he would be attending to household matters. As Mr. Clubb suffers from partial deafness, Hooch would let him know if someone was at the door. He would retrieve the phone for him and accompany him to Walmart (without objection by management, and many workers there support him bringing this claim). At Christmas, the Clubbs bestowed presents on Hooch, as thanks for his service and love to the entire extended family, including Mr. Clubb's grandchildren and friends with whom Hooch would gently play. Hooch also helped mediate Mr. Clubb's depression and insomnia, allowing him to discontinue the use of sleep aids. Following his untimely, brutal, and quite ignominious demise, Mr. Clubb must now resume taking medications just to cope. Additionally, Mr. Clubb is disabled and unable to work due to his maladies; before the affliction, he was a truck driver and detention officer for the Twin Falls Sheriff's Office.

Mr. Clubb also brings this claim against the aforementioned individuals and entities in relation to Hassani (1) threatening to arrest Mr. Clubb—who suffers from Parkinson's Disease and whose involuntary movements were amplified by the extreme stress of the encounter—when he allegedly put his hand near Hassani's face; (2) ordering Mr. Clubb to sit down on his own property in his own home, without any lawful basis, when Hassani had not been invited or allowed in the residence; and (3) threatening to arrest Mr. Clubb when he quite understandably refused to provide identification on demand (after being confronted by an expletive-spewing officer at his front door against the backdrop of his dying/deceased dog on the front lawn). Such threat to arrest him for obstruction and delay under IC 18-705 was unconstitutional. *Graves v. City of Couer d'Alene*, 339 F.3d 828 (9th Cir.(Id.)2011)(statute authorizing arrest for obstruction unconstitutional to extent based on individuals' refusal to identify himself, a clearly established Fourth Amendment right). Hassani had no probable cause to believe that Mr. Clubb had broken any law. Dog at large is a civil infraction. FMC 5-2-5, 5-2-10.

Causes of action include, *inter alia*, conversion, trespass to chattels, reckless or negligent property destruction, failure to train/supervise, negligent retention, negligent infliction of emotional distress, intentional or reckless infliction of emotional distress, and constitutional claims under 42 U.S.C. §§ 1983 et seq. (e.g., Fourth Amendment seizure, failure to train/supervise), as well as the Idaho State Constitution.

Damages include, *inter alia*, Hooch's intrinsic/special value, loss of use, emotional distress/mental anguish, diminished enjoyment of life, and punitives. Such elements of damage were permitted to go to a jury in the case of *Criscuolo v. Grant Cy.*, 10-470-TOR (E.D.Wash. tried March 2014 to verdict for plaintiff where deputy shot dog three times in alleged defense of a drug detection dog).

Without conceding the truth of all allegations made therein, for additional information about the claim, see the attached documentation obtained through public disclosure. Filer P.D. Case No. 1400015. No waivers of rights or claims is intended or implied in this correspondence. Please contact Mr. Karp and Mr. Peterson with any questions concerning this claim.

Mr. Clubb also makes a claim under the Idaho Public Records Law given the City's failure to timely produce documents as set forth in the attached *Starkey Aff.* The faxed response from the Filer Police Chief on Mar. 20, 2014 failed to comply with IC 9-339(4) by not identifying the specific bases for purported exemption from disclosure and by failing to describe the right of appeal and the time period for doing so. Further, when Gary Starkey traveled to Filer to examine documents, he was denied the very items that Chief Reeves claimed were "available." Lastly, the partial denial was never mailed. Damages sought for violation of the IPRL include reasonable attorney's fees, and costs, per IC 9-344, and a civil penalty against Chief Reeves for \$1000 for each class of document wrongfully withheld, per IC 9-345.

Claimant's Name and Mailing Address:

Richard D. Clubb
C/O Adam P. Karp, Esq.
Animal Law Offices of Adam P. Karp
114 W. Magnolia St., Ste. 425
Bellingham, Wash. 98225

Amount Claimed:

Subject to ER 408/FRE 408, and related only to the shooting of his dog (and not the IPRL claim), Mr. Clubb claims one hundred fifty thousand (\$150,000) dollars, inclusive of compensatory and punitive damages, but exclusive of reasonable attorney's fees and costs.

42 U.S.C. § 1988 permits recovery of reasonable attorney's fees and litigation costs upon proof of a constitutional injury by a state actor acting under color of law. A § 1983 violation arises where a state actor deprives a plaintiff of a federally protected right, privilege, or immunity, causing damage. At issue here is the Fourth Amendment. It is clearly established law that killing a dog constitutes a Fourth Amendment seizure:

As we stated in *Fuller I*, "The destruction of property is 'meaningful interference' constituting a seizure under the Fourth Amendment...." *Fuller I*, 36 F.3d at 68 (citing *United States v. Jacobsen*, 466 U.S. 109, 124-25 (1984)). Shooting and killing a dog clearly constitutes "destruction" of that dog. In 1991 it was apparent in light of preexisting law that shooting and killing a dog constituted a seizure within the meaning of the Fourth Amendment.

Fuller v. Vines ("Fuller II"), 117 F.3d 1425 (1997), *unpub.* Other Circuits have reached the same conclusion. Hassani committed a Fourth Amendment seizure when he killed Hooch. For the

reasons stated above, the seizure was unreasonable given the lack of a warrant and no exigent circumstances providing an exception to the warrant requirement.

Punitive damages are available against individual state actors upon proof that they acted with intent to violate a federally protected right or in reckless disregard for whether his action would so violate; actual malice need not be found. Hassani's (1) admission to not considering any other options aside from shooting Hooch with a firearm, (2) admission to not calling for backup, admission to not considering returning to the purported safety of his vehicle, (3) admission to being utterly clueless about whether he had any alternatives to the use of lethal force set forth by FPD policy, (4) admission to not considering using his air horn a second time to scare off the dogs and alert Mr. Clubb, failing to call Mr. Clubb by telephone, (5) wading directly into Hooch's territory on property he knew was owned by Mr. Clubb when no exigency required such escalation; (6) dash cam-recorded epithets and out-of-line behaviors drip with deep animosity toward dogs (telling another deputy, "I shot the fucking thing") and unreasonable agitation, evincing malice and conduct beyond the pale for a law enforcement officer; (7) admission to killing an *already restrained* dog in 2008 because he lacked the competency to properly handle the canine who was "still on the catch pole" and bit him; and (8) claim he had been bitten three times before he killed Hooch, conceding that those prior instances affected his thought process on this occasion—are all factors warranting punitive damages.

The requested sum fits within the range of other cases, such as *Fuller v. Vines*, mentioned above, where the jury awarded \$143,000 compensatory and \$10,000 punitive damages relative to an officer slaying a dog by discharging his firearm in front of the dogs' owners and then threatening to put the dog's owner in the morgue, and *Snead v. SPCA of Penn.*, 2007 Pa.Super. 204 (2007), *appeal granted in part*, 600 Pa. 372 (2009) and *order aff'd*, 604 Pa. 166 (2009), *appeal den'd*, 992 A.2d 890 (Pa.2010), where the jury awarded \$100,000 in punitive damages and \$54,000 in compensatory damages when SPCA lied to Snead about fact they euthanized her dogs when, in fact, they killed them three days after she tried to redeem them. Also consider the award in *Russell v. City of Chicago*, N.D.Ill. 10-CV-00525 in the sum of \$333,000 (\$175,000 compensatory to one brother, \$85,000 to other brother, \$70,000 to Russells' parents, \$2000 in punitive damages against Ofc. Antonsen for killing the family's 9-year-old black Lab named Lady, and \$1000 in punitive damages against the supervisor who decided to arrest Thomas Russell for obstruction) arising from a 2009 raid where police executed a valid warrant to search for drugs in the Russells' home. In 2012, a Maryland jury awarded over \$220,000 in relation to the nonlethal maiming of a family dog shot by a deputy who claimed he fired in self-defense. *Jenkins v. Jenkins*, Frederick Cy. Cir. Ct. No. 10-C-1003778 (2012). Lastly, Mr. Karp's clients recovered \$51,000 and over \$50,000 in attorney's fees and costs through an accepted FRCP 68 Offer of Judgment in *Wright v. City of Des Moines*, 12-CV-01962-JLR (W.D.Wash.)(officers executed Newfoundland by shooting her four times in neighbor's backyard).

Mr. Clubb also seeks reasonable attorney's fees, costs, and penalties as allowed by the IPRL.

Signed this Jul. ____, 2014 in the city of Filer, Id.

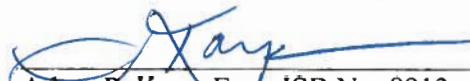
Richard D. Clubb, Claimant

Service of Notice:

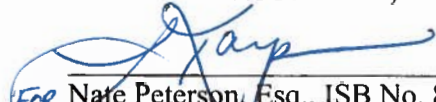
I certify that on Jul. 3rd, 2014, I served a true copy of the foregoing notice on the individuals identified above by depositing same in the U.S. mail, both certified, return receipt requested and first-class.

Respectfully,

ANIMAL LAW OFFICES


Adam P. Karp, Esq., ISB No. 8913

NATE PETERSON LAW, PLLC


For Nate Peterson, Esq., ISB No. 8529
CC: Richard Clubb
Encl.: As stated

reasons stated above, the seizure was unreasonable given the lack of a warrant and circumstances providing an exception to the warrant requirement.

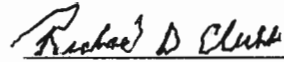
Punitive damages are available against individual state actors upon proof that they acted with intent to violate a federally protected right or in reckless disregard for whether they would so violate; actual malice need not be found. Hassani's (1) admission to not considering any other options aside from shooting Hooch with a firearm, (2) admission to not having backup, admission to not considering returning to the purported safety of his home, (3) admission to being utterly clueless about whether he had any alternatives to the force set forth by FPD policy, (4) admission to not considering using his air horn to scare off the dogs and alert Mr. Clubb, failing to call Mr. Clubb by telephone, (5) driving directly into Hooch's territory on property he knew was owned by Mr. Clubb when he was required to stop, (6) dash cam-recorded epithets and out-of-line behaviors (including animosity toward dogs (telling another deputy, "I shot the fucking thing") and agitation, evincing malice and conduct beyond the pale for a law enforcement officer), (7) admission to killing an *already restrained* dog in 2008 because he lacked the capacity to properly handle the canine who was "still on the catch pole" and bit him; and (8) having been bitten three times before he killed Hooch, conceding that those prior instances were part of the thought process on this occasion—are all factors warranting punitive damages.

The requested sum fits within the range of other cases, such as *Fuller v. Vinson*, 2008 WL 143,000 (S.D. Cal. 2008), where the jury awarded \$143,000 compensatory and \$10,000 punitive damages for an officer slaying a dog by discharging his firearm in front of the dog's owner, threatening to put the dog's owner in the morgue, and *Snead v. SPCA of Penn.*, 2007 WL 204 (2007), *appeal granted in part*, 600 Pa. 372 (2009) and *order aff'd*, 604 Pa. 372 (2009), *appeal den'd*, 992 A.2d 890 (Pa.2010), where the jury awarded \$100,000 in punitive damages and \$54,000 in compensatory damages when SPCA lied to Snead about fact they euthanized dogs when, in fact, they killed them three days after she tried to redeem them. Also see award in *Russell v. City of Chicago*, N.D.Ill. 10-CV-00525 in the sum of \$333,000 in compensatory to one brother, \$85,000 to other brother, \$70,000 to Russells' parents, and punitive damages against Ofc. Antonsen for killing the family's 9-year-old black Labrador, and \$1000 in punitive damages against the supervisor who decided to arrest Russell for obstruction) arising from a 2009 raid where police executed a valid warrant for drugs in the Russells' home. In 2012, a Maryland jury awarded over \$220,000 in punitive damages for the nonlethal maiming of a family dog shot by a deputy who claimed he fired in self-defense. *Jenkins v. Jenkins*, Frederick Cy. Cir. Ct. No. 10-C-1003778 (2012). Lastly, Mr. Clubb recovered \$51,000 and over \$50,000 in attorney's fees and costs through an accepted Offer of Judgment in *Wright v. City of Des Moines*, 12-CV-01962-JLR (W.D.Wash. 2012) (executed Newfoundland by shooting her four times in neighbor's backyard).

Mr. Clubb also seeks reasonable attorney's fees, costs, and penalties as a matter of public policy.

Signed this Jul. 1, 2014 in the city of Filer, Id.

Notice of Claim: Richard D. Clubb | Hassani & City of Filer



Richard D. Clubb, Claimant

Service of Notice:

I certify that on Jul. ____, 2014, I served a true copy of the foregoing individuals identified above by depositing same in the U.S. mail, both certified, requested and first-class.

Respectfully,

ANIMAL LAW OFFICES

Adam P. Karp, Esq., ISB No. 8

NATE PETERSON LAW, PLLC

Nate Peterson, Esq., ISB No. 8
CC: Richard Clubb
Encl.: As stated



**City of Filer
Police Department
INCIDENT REPORT**

1400015

REPORT NUMBER

NARRATIVE

REPORTED BY 18 HASSANI, TAREK

REPORT FILED

On 02/08/2014 at approximately 17:36 I was dispatched to 1003 Jacklyne Cir for a dog call. I arrived on scene and made contact with the reporting party Freeborn, Allie 1003 Jacklyne Cir Filer, ID 83328. She told me that there has been a black & yellow lab that are always out and in her yard. She told me that they appear to be unfriendly. She asked me about her options of what she can do. I told her to start writing down all the times the dog is out because if she decides to sign a citation in the future then she will need a history for the court to see. She also asked me to talk to them about the dog issue.

As I was driving down the road to 1009 Jacklyne Cir I saw a brown lab in the middle road I used the air horned to get the dog out of the road. I pull up in front of the house a black lab type dog came out into the road way. As I tried to get of my vehicle the dog was already barking and growling at me I finally got out the vehicle tried to make my way up the front door to talk to them about the dog. At one point I had to kick the dog to get it away from me because the dog kept growling aggressivel. I pulled my gun out and yelled at the dog to get away. Each time I moved, the two dogs would circle around me. The black one would growl and front teeth would be showing with the front part of the dogs mouth exposed. I felt that the dog was trying to bit me on several different times. I was only able to make it from my patrol car to the side walk area before I did not feel that I was safe from the black dog. The last time the dog growled and showed its teeth I finally felt a fear of being bit by the black dog so for my safety I shot the black dog.

At that point the black dog walked away and I finally was able to make contact with the owner of the dog. I issued him a citation for dog at large he told me that he was going to fight it. I tried explaining the citation and he told me that he was going to fight. I again tried to explain the citation and kept saying he was going to fight me. I then handed him the citation and left.

STATE OF IDAHO)
 :SS
County of Ada)

I, Gary Starkey, being first duly sworn, depose and state that:

1. I am competent to testify on the matters discussed below. I have personal knowledge of the facts stated herein, except where indicated.

2. On March 18, 2014 I faxed a public records request to the City Clerk and Chief of Police of the City of Filer. Attached hereto as Exhibit A are true and accurate copies of these requests.

3. On March 20, 2014, I received a faxed response from Filer Chief of Police Tim Reeves, which noted the availability and/or location of the requested records, and the relevant fees to obtain these documents.

4. I subsequently contacted Chief Reeves in order to schedule an appointment to inspect and receive these documents. An initial appointment was scheduled for April 16, 2014, which was later rescheduled to May 2, 2014.

5. On May 2, 2014, I met with Chief Reeves at the Filer Police Department to inspect and receive the documents. At that time Reeves produced an old shooting regarding public request number 2 and a copy of the police report regarding request number 4. He produced nothing else and stated that other requested records were not to be produced because they were not public information, or in the case of the officer's personnel file, would require a waiver from the officer. He further stated that he could only produce reports regarding the subject officer if he was first given the precise dates of any such incident, and that he was unable to simply search his database by the officer's name or nature of the incident.

6. Beyond the March 20, 2014 faxed response by Chief Reeves, at no time has affiant received any written correspondence regarding the public records request. Affiant has incurred expenses in time and money in pursuit of these public records request, including travel between Boise and Filer, and much of this expense could have been avoided had Chief Reeves and/or another Filer employee properly and timely provided the requested public records and/or communicated those records that are exempt from the public records law.

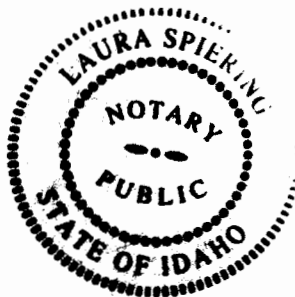
7. Affiant further sayeth not.

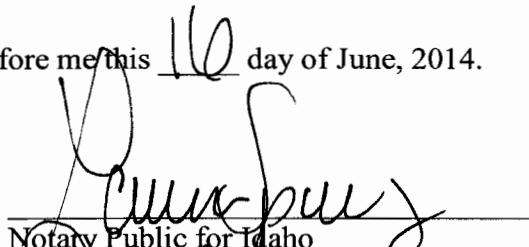
Respectfully submitted this 16 day of June, 2014.


GARY STARKEY

STATE OF IDAHO)
 :SS
County of Ada)

SUBSCRIBED AND SWORN to before me this 16 day of June, 2014.




Notary Public for Idaho

Residing at: Boise, ID

Commission Expires: 04/08/2014

A

**FILER POLICE DEPARTMENT**

300 MAIN ST. P.O. BOX 140 FILER IDAHO 83328
(208) 326-5000 (208) 326-4123 FAX (208) 326-5004

FAX COVER SHEET

DATE 03/20/2014

TO: FAX MACHINE NUMBER 208- 424-3100

COMPANY Gary Starkey

ATTENTION

FROM: Chief Reeves

THIS IS THE COVER SHEET WITH 3 PAGES TO FOLLOW.

TRANSMITTED FROM FAX # (208) 326-5004

IF YOU EXPERIENCE ANY DIFFICULTIES RECEIVING THIS
PLEASE CALL (208) 326-4123

Shari Hart
City Clerk-Treasurer
City of Filer
Fax: (208) 326-5002
Email:

Chief Tim Reeves and/or Records Custodian
Filer Police Department
City of Filer
Fax: (208) 326-5004
Email:

Public Records Holder:

My name is Gary Starkey and I wish to make a public records request.

I make this public records request for the following pursuant to I.C. 9-338(4). This request arises from the shooting of Rick and Deena Clubb's Labrador, Hooch, by Officer Tarek Hassani, on or about February 8, 2014 in Filer, Idaho. Prior to production please give me an estimate of the total cost. Where possible, I request responsive documents be sent by email to me at _____ or faxed to me at (208) 424-3100. If you have questions or your search requires keyword searches, then please contact me via email or phone—(208) 890-6814.

By this request, I seek any and all non-confidential records related to this incident, as well as any and all non-confidential records related to Officer Tarek Hassani. Additionally, this request seeks any and all records related to any and all Filer Police Department's policies, procedures and trainings regarding the use of force, responding to dogs at large.

Specifically, we request the following:

1. The entire case file pertaining to this incident including any and all recordings made and/or recorded related to this incident; *Available.*
2. As to Officer Hassani, all records pertaining to his discharging a firearm or using any force (including less-lethal, non-lethal) at an animal of any species or breed going back to first date of employment with the Filer Police Department; *Available*
3. All records pertaining to Officer Hassani discharging a firearm at a human going back to first date of employment with CCSO the Filer Police Department; *Available*

4. All investigative reports (criminal and administrative), including but not limited to preliminary and final reports, IA/IIU files, Shooting Review Board files, and Use of Force files, concerning (2) and (3), including the shooting of Hooch on 2/8/14; *Available*
5. Copies of all audio (i.e., radio traffic, 911 calls) within one hour before the shooting to the clearing of the call involving the shooting of Hooch; *Will have to request from sicomm. Record of Incident on hand. Recordings of incident at time.*
6. All Mobile Digital Terminal ("MDT")/laptop entries/instant messages/logs/searches/returns/emails by Officer Hassani for the entire date of Hassani shooting Hooch, not just limited to this police event; *Department does not control these records.*
7. All changes and revisions made to any report submitted as part of this incident; *Available*
8. All dash cam (on-board) video footage/audio from any officer's vehicle in the vicinity of the shooting from one hour prior to the shooting through clearing of the call involving the shooting; *Available*
9. The complete CAD log for Officer Hassani, for the entire shift of that officer on the day of the shooting; *Available*
10. All searches/logs/returns performed by dispatch in response or relation to the incident involving the shooting of Hooch; *Available in incident log.*
11. All email or written communications between any Filer Police Department officer or employee, on the one hand, and any other person, on the other hand (i.e., including officer-to-officer communications)- as it pertains to the shooting of Hooch; *None*
12. The entire Filer Police Department manual/policies and procedures in effect on the date of the shooting; *Available*
13. All manuals, directives, general and specific orders, and circulars pertaining to use of force/shooting animals; *Included in Manual.*
14. All documents pertaining to Rick Clubb (e.g., prior case files); *Available.*
15. All documents pertaining to the caller who reported the dogs at large that led Officer Hassani to Mr. Clubb's residence that day of the incident; *Available*
16. The full training jacket/list for Officer Hassani as of 2/8/14; *Exempt.*
17. All documents reflecting the inventory of all items issued to Officer Hassani and on his person at the time of the shooting of Hooch, including uniform, armor, weapons, tools, etc.; *Available.*

18. All Use of Force, Shooting Review Board, Deadly Force Review Board files involving the shooting of a dog by any deputy in the history of Filer Police Department; and *Available in Officers Report.*
19. Any and all records of trainings, programs, counseling and/or other educational programs; and *Exempt.*
20. The entire report submitted by the Nampa Police who investigated the matter and any materials and/or recordings relied upon or referenced in that report which you have not otherwise produced. *Available*

Copies .15¢ each estimate less than 700 copies
CD/DVD \$3.00 each Video on DVD
Radio and Phone recordings on CD
Police Department Policy Manual on CD